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| APPLICATION NO.                  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------------|-------------|----------------------|---------------------|------------------|
| 10/646,958                       | 08/21/2003  | Carey W. Smith       | 42P16159            | 3005             |
| 8791                             | 7590        | 12/10/2007           | EXAMINER            |                  |
| BLAKELY SOKOLOFF TAYLOR & ZAFMAN |             |                      | CHO, HONG SOL       |                  |
| 1279 OAKMEAD PARKWAY             |             |                      |                     |                  |
| SUNNYVALE, CA 94085-4040         |             |                      | ART UNIT            | PAPER NUMBER     |
|                                  |             |                      | 2619                |                  |
|                                  |             |                      | MAIL DATE           | DELIVERY MODE    |
|                                  |             |                      | 12/10/2007          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                      |                  |
|------------------------------|----------------------|------------------|
| <b>Office Action Summary</b> | Application No.      | Applicant(s)     |
|                              | 10/646,958           | SMITH, CAREY W.  |
|                              | Examiner<br>Hong Cho | Art Unit<br>2619 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 October 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,4,6-8,11,13-15,18 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 4, 6-8, 11, 13-15, 18 and 20-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. This office action is in response to the RCE filed on 10/19/07. Claims 2, 3, 5, 9, 10, 12, 16, 17 and 19 were canceled. Claims 1, 4, 6-8, 11, 13-15, 18 and 20-25 are present in the instant application.
  
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/19/07 has been entered.

### *Claim Objections*

3. Claims 15 and 18 are objected to because of the following informality:

Re claim 15, line 1, "a storage medium" should read - - a computer readable medium - - .

Re claim 15, line 2, "a machine" should read - - a computer - - .

Re claim 18, line 2, "the machine" should read - - the computer - - .

***Claim Rejections - 35 USC § 112, First paragraph***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 8, 11, 13 and 14 are rejected under 35 U.S.C. 112, first paragraph, as a single means claim.

Re claim 8, it is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. Claim 8 recites a processor and some of the functions of the processor. See MPEP 2164.08(a) and *In re Hyatt*, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983).

Claims 11, 13 and 14 depend from claim 8 are similarly rejected.

***Claim Rejections - 35 USC § 112, Second paragraph***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 4, 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1, a preamble recites "A method comprising", but a body is directed to a processor and its functions.

Claims 4, 6, and 7 depend from claim 1 are rejected.

Re claim 8, the amendment ends with a period after "protocol", but there are claim limitations after the period.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
9. Claims 1, 4, 6-8, 11, 13-15, 18 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Araujo et al (US 6108350), hereinafter referred to as Araujo, in view of Milbrandt (US 6631120).

Re claims 1, 8, 15, 22 and 25, Araujo discloses a central office (*a second node*, figure 1a, element 130) negotiating with customer premises equipment including an ADSL modem (*a first node*, figure 1, element 110) to use a cell-based protocol (*determining one or more communication protocols via which a second node is capable of communicating with the first node based upon one or more parameters received from the second node during an initialization of communication between the first node and the*

*second node, column 5, lines 30-40).* Araujo discloses implementing cell-based protocol (ATM protocol) stack after negotiating between the customer premises equipment and the central office such that the cell-based protocol is used on the link (*selecting second drivers to implement a second communication protocol if the one or more parameters specify the second communication protocol, column 5, lines 50-53*). Araujo fails to disclose selecting first drivers to implement an Ethernet protocol if the one or more parameters specify the first communication protocol. Milbrandt discloses a communication device supporting an Ethernet protocol (column 5, line 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Araujo by adding to it Ethernet protocol stack as suggested by Milbrandt for the benefit of conforming to widely used data link layer protocol, Ethernet.

Re claim 22, Araujo discloses customer premises equipment with a PC to accommodate protocol stacks (*a first node comprising circuitry that includes a circuit card and a circuit board that includes a circuit card slot that is capable of coupling the circuit card to the circuit board*) and a central office.

Re claims 4, 11 and 18, Araujo discloses selecting a cell-based protocol stack by customer premises equipment for efficient transmission (*in response at least in part to the selecting, invoking a plug and play (PnP) protocol manager to initiate loading, at least in part, of the one or more drivers into memory, column 6, lines 51-57*).

Re claims 6, 13 and 20, Araujo discloses customer premises equipment with an ADSL modem driver to be utilized for selection protocol stack (*the first node comprises*

*at least one modem driver and the determining is performed, at least in part, by the at least one modem driver, figure 1a, element 118).*

Re claims 7, 14 and 21, Araujo discloses a central office negotiating with customer premises equipment to use a cell-based protocol (*initialization of the communication comprises a negotiation between the first node and the second node; and in response at least in part to a request from the first node, the second node transmits during the negotiation the at least one parameter to the first node*, column 5, lines 30-40).

Re claims 23 and 24, Araujo implicitly discloses a PC with a circuit board comprising a bus and a host processor coupled to the bus; and when the circuit card with a DSL modem is coupled to the slot, the circuitry is coupled to the bus.

***Response to Arguments***

10. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087. The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*hc*  
Hong Cho  
Patent Examiner  
11/27/07